

ST 04-0001-GIL 01/08/2004 TELECOMMUNICATIONS EXCISE TAX

If Limited Exchange Carriers and Inter-Exchange Carriers are retailers of telecommunications originated or received intrastate or interstate in Illinois, then they are subject to the Telecommunications Excise Tax. See 35 ILCS 630/1 et seq. (This is a GIL.)

January 8, 2004

Dear Xxxxx:

This letter is in response to your letter dated May 6, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We hereby request a ruling on the application of the sales and use tax to the following transactions.

**FACTS**

Our client (hereafter the 'company') is an out of state company providing data communication services that transmit and receive business data to remote terminals. The company's primary customers are banking institutions that have data communication needs with their automatic teller machines ('ATMs'). The data communication services consist of satellite transmissions as well as frame relay transmissions (land line similar to telephone lines).

In general, a typical service consists of providing the communication means between an ATM and the bank. All remote data that is entered at the terminal (ATM) is transmitted/sent to the hub where it is accumulated and routed to bank's datacenters for processing. Once the bank processes the information they send it back through the hub to the ATM. The transmission is done in real time.

The company's presence in Illinois consists of the corporate headquarters and the equipment that is attached to the ATMs. The hub is located in STATE. The transmission originates in your state, through the use of ATM, and is routed through STATE to possible instate or out-of-state data processing center and rerouted back to your state (location of the ATM). The billing address is the location of the bank and it may or may not be in your state.

Similar services are also offered for credit card transactions. The difference is that for credit card services the equipment is provided to the retail establishments, such as stores, gas stations, and others. The data transmission is the same as for ATM transactions.

### **With respect satellite data communication service ('VSAT')**

The remote connectivity is accomplished by installing a satellite communications module, mostly company owned, on each ATM. The modules are made up of two major components: HNS DIU (Digital Indoor Unit) and HNS ODU (Outdoor Unit) Satellite dish and mount. The DIU connects to the customer's ATM or other terminal device. The information that is entered at the ATM travels from the terminal to the DIU, to the ODU, transmitted to the Satellite and ultimately to the hub. The hub has a large dish that receives the data, accumulates it and sends it to the bank's data processing center. The Hub is operational and manned 24 hours per day 7 days per week and 365 days per year. The service that the company provides allows the customer datacenters to communicate with the HUB thus allowing them to receive the data from the remote modules connected to their terminals. The architecture is constituted of multiple routers interconnected with ABC's frame relay network. This allows terrestrial (or land line) access to the HUB from any location served by ABC. (Customer connections to the HUB are called backhauls. Every customer's backhaul is engineered for their special requirements.)

The company uses independent contractors for all out of state installations of the modules. The fees (itemized on the invoice) with respect to the VSAT service consist of the following:

#### **Remote Service Fees**

- One time installation fee
- Miscellaneous fees for deinstallation or relocation of equipment and de-icing of equipment
- Standard monthly service fee which includes the following:
  - remote maintenance of modules
  - monitoring, troubleshooting and service dispatch
  - lease amortization of the modules

#### **HUB Charges**

- A service fee for all remote customer data that is routed to the company's hub
  - Inroute service fees to cover additional satellite bandwidth inbound to the hub
  - Outroute service fees to cover additional outbound bandwidth requirements
  - SLIM (Super Line Interface Module) to cover special hub connectivity requirement

(Some customers prefer to bundle hub charges with their remote service fees.)

#### Backhaul Charges (connection to the HUB)

- route amortization
- ABC circuit cost
- Equipment maintenance fees

#### **With respect to Frame Relay Service**

The Frame Relay Service is the essentially same as the VSAT service, however, the means by which the communication is accomplished is different. This service is provided using traditional land lines. The company resells ABC Frame Relay service to its customers who can't or don't want to avail themselves of the satellite service. Depending on the application, the company provides either Frame Relay (FRAD) routers. These FRADs connect the customer's ATM or terminal device to the local ABC circuit. There is another small device called a DSU (Digital Services Unit) that actually connects the FRAD to the circuit.

The fees (itemized on the invoice) with respect to the Frame Relay Service consist of the following:

#### Remote Installation Fees

- A one-time fee for installation and provisioning of FRAD and DSU at remote site (It may also include a charge for a DEMARC extension fee for longer than standard cable runs.)

#### Remote Service Charges

- A monthly circuit charge for each remote includes:
  - ABC circuit charge
  - Remote equipment lease amortization
  - Standard 9 to 5, 5 days per week Remote Equipment maintenance Charge
  - Equipment monitoring, troubleshooting and dispatching
  - Optional maintenance for an additional monthly fee

#### HUB Charges

- A service fee for all remote customer data that is routed to the company's hub (The routers then route the data to the given customer backhaul. The Hub is operational and manned 24 hours per day 7 days per week and 365 days per year.)

#### Backhaul Charges

- Same as VSAT charges

#### **ISSUE**

Based on the foregoing, we respectfully request your office's written opinion (including discussion of applicable statutes, cases and/or rulings) on the following:

1. What taxes or charges is our client liable for (telecommunication, sales and use, gross receipts, etc)?

2. Can a resale certificate be issued to the supplier where the services are resold?
3. How is taxability determined? (interstate, intrastate, billing address, location of the ATM, etc.)
4. How is taxable amount determined? (combined total, line item, etc.)

If you have any questions regarding this matter, please phone me.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. If Limited Exchange Carriers and Inter-Exchange Carriers are retailers of telecommunications originated or received intrastate or interstate in Illinois, then they are subject to tax.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Please note that retailers of telecommunications who are reselling telecommunications are required to register with the Department, file returns, and remit Telecommunications Excise Tax directly to the Department. Purchases by telecommunications retailers from local and long distance carriers for line time may be purchased without incurring tax by providing these suppliers with resale certificates.

Section 8 of the Act (35 ILCS 630/8) provides that if persons who originate or receive telecommunications in this State claim to be a reseller of such telecommunications, such persons shall apply to the Department for a resale number. Upon approval of the application, the Department shall assign a resale number to the applicant and certify such number to him. Except as provided in the Act, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with sales of telecommunications for resale.

If tax is paid to local and long distance carriers for line time that is purchased for resale, a registered telecommunications provider can take a credit against its Telecommunications Excise Tax liability without filing a claim with the Department. See 86 Ill. Adm. Code 495.130, enclosed. If a reseller of telecommunications who is not required to be registered has paid tax to local or long distance carriers for line time that was for resale, the carrier could refund the tax to the reseller and file a claim for credit with the Department. These provisions are set forth in 35 ILCS 630/10.

Effective January 1, 2003, the manner in which local telecommunications taxes are collected changed. See 35 ILCS 635 Telecommunications Infrastructure Maintenance Fee Act and 35 ILCS 636, Simplified Municipal Telecommunications Tax Act. Beginning on January 1, 2003, the Department collects most municipal telecommunications taxes. The change in the law does not affect the City of Chicago.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If

you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.